

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 651 OF 1997

Deoram Bhagaji Gangurde and ors. .. Petitioners

Vs.

Smt. Radhabai G. Katarnavare and anr. .. Respondents

Ms. Smita Mane h/f Mr. P.B. Shah for Petitioners.

Mr. V.Z. Kankaria for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 21, 2005.

ORAL JUDGMENT:

1. In Regular Darkhast No.6 of 1996 an application came to be filed by the Judgment Debtor on or about 17/10/1996 praying for dismissal of the said Darkhast Proceedings and that application came to be rejected by the learned Civil Judge, Junior Division, Dindori by the impugned order. Regular Civil Suit No.711 of 1981 was filed by the present respondents and the said suit was decreed on 14/10/1985 by an order of perpetual injunction so as not to disturb the possession of the plaintiff in respect of half southern portion of the agricultural land admeasuring

4 hectares and 45 ares located in Gat No.445 of village Dindori. It appears that the petitioners-judgment debtors disturbed the possession or obstructed the possession of the decree holders and, therefore, Darkhast No.6/1996 was moved on or about 25/4/1996 for execution of decree by attachment and sale of movable property of the judgment debtors and for detention of petitioner no.1 in civil prison for having caused obstruction. On notice, the petitioners moved an application as referred to hereinabove. The learned Judge of the execution court held that the objections were not tenable.

2. The petitioners' application was purportedly moved under Section 47 of the C.P.C. A perusal of the said application shows that the petitioners, after a period of about 11 years, virtually challenged the legality of the decree. They had contended that the entire land admeasuring 4 hectares and 45 ares was in their possession right from 1965-66 and half of the land was purchased from one Shiva Gopala Bagar and the remaining half land had come to their share by way of a deemed purchaser under the Tenancy Act. All these

issues were obviously considered by the court in Regular Civil Suit No.711 of 1981 and then only the decree was passed. It was not open for the judgment debtors to raise a challenge to the legality of the decree itself in an execution proceedings, though it was open to them to show any circumstance wherein the decree had become inexecutable due to certain developments that had taken place subsequently. The court below rightly held that the application filed under Section 47 of the C.P.C. was not tenable and, therefore, no interference is called for in the said view.

3. In the result, this Civil Revision Application fails and the same is hereby dismissed. Rule discharged. Interim order stands vacated.

(B.H. Marlapalle, J.)